IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.140 OF 2005

Shivram Deoji Ubale ...Appellant

Vs.

Anande H. Ubale & Anr. ...Respondents

Mr. A.V.Joshi i/b Mr.C.S.Joshi for the Appellant
Mr. Ajit J. Kenjale for the Respondent Nos. 1 and 2.

CORAM: A.S.OKA, J.
DATED: MARCH 31,2005.

P.C.:

1. Heard Advocates for the parties. The suit for declaration and possession filed by the Appellant-Plaintiff has been dismissed by the Trial Court and decree of the Trial Court has been confirmed by the Appellate Court. The case made out in the plaint is that the Appellant is claiming through deceased Appa Pira who was the original owner of the suit property.

2. On consideration of the evidence on record both the Courts below have held that the Appellant-Plaintiff failed to establish that he had any relationship with Appa Pira and that is the reason why the Appellant has not succeeded.

3. The learned Advocate for the Appellant submitted that the genealogy set out in the plaint has been established by the Appellant and apart from mere denial the original Defendants

have not pleaded the correct genealogy. He submitted that the Trial Court has accepted the fact that the Appellant-Plaintiff was in possession of the suit site and the said finding of the Trial Court has not been set aside by the Appellate Court.

4. In so far as relationship between the Appellant-Plaintiff and deceased Appa Pira is concerned, on consideration of oral and documentary evidence on record the Courts below have recorded a finding of fact that the Appellant has failed to establish the relation. The existence of relationship is purely question of fact. The findings which are rendered on appreciation of evidence cannot be disturbed in Second Appeal. The findings of the Appellate Court are not perverse. Even assuming that some other view is possible to be taken is no ground to interfere in the Second Appeal. Even assuming that the Appellant has established his prior possession he cannot succeed in the suit as the suit is for declaration of exclusive ownership. The suit is not filed on the basis of prior possession. There is no merit in the Appeal.

5. Second Appeal is dismissed with no order as to costs.

Judge.